

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4938 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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NAGINBHAI MANIBHAI PATEL & 6 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR DHAVAL BAROT FOR MR DF AMIN for Petitioner(s) : 1 - 7.
MR SIRAG GORI, AGP for Respondent(s) : 1,2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 12/01/2006****ORAL JUDGMENT**

1.In the present petition, the petitioners have challenged an order dated 15-03-1995 passed by the Secretary,(Appeals) Revenue Department, Government of Gujarat. By the impugned order, the Secretary was

pleased to set aside an order dated 31-01-1994 passed by the District Collector, Kheda by which "NA Permission" was granted to the petitioners for a plot of land bearing city survey no. 635 paikie of Town Planning Scheme No.6 of Final Plot No. 154 of Anand admeasuring 2535 sq. mtrs.

2.Short facts leading to the present petition are as under :

2.1The land bearing survey no. 635 admeasuring 1 acre 20 gunthas was jointly held by Shri Desaibhai Kashibhai and Shri Manibhai Harmanbhai. Half of the land was entered in the name of Shri Desaibhai Kashibhai and other half i.e. 30 gunthas was entered in the name of Shri Manibhai Harmanbhai, who is father of petitioner no.1 herein. Upon introduction of Town Planning Scheme No.6 of Anand, these lands were given Final Plot No. 154 and 155 respectively. Final Plot No. 154 admeasuring 2535 sq. mtrs. was allotted to Shri Manibhai Harmanbhai, father of the petitioner no.1, whereas Final Plot No. 155 was allotted to Shri Desaibhai Kashibhai. The petitioners desired to put the land in question to non-agricultural use. Anand Urban

Development Authority was therefore, approached for grant of Development Permission. Such a permission was granted by an order dated 31-01-1994 on the condition that necessary "NA Permission" will be obtained before carrying out development. The petitioners therefore, approached the Collector, Kheda and requested for grant of "NA Permission" for the aforesaid land bearing Final Plot No. 154 of Town Planning Scheme No.6 of Anand. The Collector granted such a permission by his order dated 31-01-1994. In pursuance of the permission so granted, the petitioners entered into a development agreement with one Association. The Association started putting up construction over the land in question. It is the case of the petitioners that by January, 1995, substantial construction was already completed. The respondent no.1 i.e. Secretary in exercise of suo moto powers under section 211 of the Bombay Land Revenue Code decided to take "NA Permission" granted by the Collector in Revision. The show cause notice dated 12-01-1995 was therefore, issued against the petitioners that why order dated 31-01-1994 should not be set aside. The petitioners replied to the show cause notice on 15-02-1995. The respondent no.1 however, was pleased to hold that there were several

breaches of law committed in granting of "NA Permission". He therefore, set aside the order dated 31-01-1994 passed by the Collector, Kheda, remanded the proceedings for reconsideration, bearing in mind the observations made in his order. Aggrieved by such an order dated 15-03-1995, the petitioners have filed the present petition.

3. In order to appreciate full controversy between the parties, it would be necessary to take note of the grounds raised by the respondent no.1 in the show cause notice dated 12-01-1995.

3.1 In ground no.1, it was suggested that originally land was jointly held by Shri Desaibhai Kashibhai and Shri Manibhai Harmanbhai whereas "NA Permission" is obtained by the heirs of Shri Manibhai Harmanbhai alone. The legal rights of Shri Desaibhai Kashibhai would arise and there is no entry extinguishing their rights.

3.2 Ground no.2 of the show cause notice was that from the year 1961-1962 to 1973-1974, extracts of 7/12 Register are not produced. During the said time,

whether the land was held by the land owner or the tenant Shri Shankarbhai Chaturbhai is not clear. The Collector has not examined this aspect of the matter.

3.3 Ground no.3 was that though the tenant had surrendered his tenancy rights as per the entry no. 6023 dated 18-10-1953, however, in view of the provisions contained under section 32(1)(b) of the Bombay Tenancy and Agricultural Lands Act, right of the tenant would continue. It is further suggested that the order passed by Mamlatdar and ALT on 19-10-1977 does not appear to have been taken in review.

3.4 In ground no.4, it was alleged that the land in question was not cultivated for the period between 1977-1978 to 1992-1993 which would be opposed to section 65 of the Bombay Tenancy and Agricultural Lands Act and the land is liable to be resumed by the Government.

3.5 Ground no.5 was with respect to not keeping sufficient space for common plot. Upon explanation by the petitioners, however, this ground was dropped by the Secretary. One may therefore, not dilate any

further in this regard.

3.6 The last ground raised in the show cause notice was that proper approach road was not provided for entering and exiting from the plot in question.

4.The petitioners have filed a detailed reply and resisted the proposal to revise the order passed by the Collector. The Secretary however, passed the impugned order. In the impugned order dated 15-03-1995, the Secretary reached to the following conclusions :

4.1 It was held that "NA Permission" could not have been granted since the rights of the heirs of Shri Desaibhai Kashibhai were not extinguished from the land in question. In this regard it can be seen that though initially entire block of land was held jointly by Shri Desaibhai Kashibhai and Shri Manibhai Harmanbhai, upon introduction of Town Planning Scheme No.6 of Anand, both these persons were allotted separate independent plots. The predecessor-in-title of petitioner no.1 i.e. Shri Manibhai Harmanbhai was assigned plot no. 154 whereas other joint owner Shri Desaibhai Kashibhai was granted the right and title of plot no. 155. To this

assertion of the petitioners, in the reply to the show cause notice as well as in the present petition, there is no denial. The heirs of the deceased Shri Desaibhai Kashibhai have never raised any objection at any point of time. I find that the said objection is not sustainable and is only technical in nature.

4.2 With respect to ground no.2 and 3, since they overlap, it can be noted that the conclusions of the Secretary was that though records for the period between 1961-1962 to 1973-1974 were not available as stated to have been destroyed during "Navnirman Andalon", the Collector should have called upon the parties to produce independent evidence to establish the possession. Regarding the tenancy, it was suggested that order dated 19-10-1977 passed by the Mamlatdar and ALT does not appear to have been reviewed. Till it is not reviewed, same is not final. It may be noted that the petitioners had produced all the materials at their command. Some of the documents which the Secretary thought were relevant were not available with the Government records as having been destroyed by fire. Surely, the petitioners cannot be blamed for unavailability of such documents. In any case on

19-10-1977, Mamlatdar and ALT decided the question on tenancy rights in favour of the petitioners. If the higher authorities had any doubt about the legality of such an order, it was open for the competent authority to take the same in suo moto review in terms of provisions contained in Bombay Tenancy and Agricultural Lands Act. However, neither the tenant preferred any appeal against the order passed by the Mamlatdar and ALT dated 19-10-1977, nor was same taken in review by higher revenue authorities. The order passed by the Competent Authority under the provisions of Bombay Tenancy and Agricultural Lands Act in the year 1997 cannot be stated to have achieved finality, even though same was neither appealed against nor taken in suo moto revision, right till 1994 when the Collector granted "NA Permission" for the land in question. On both these grounds, I find that Secretary erred in holding these grounds against the petitioners.

4.3 With respect to the ground no.4, it can be noted that for having not carried out any agricultural operation on the land in question from 1977-1978 to 1992-1993, no proceedings were initiated against the petitioners under the Bombay Tenancy and Agricultural

Lands Act. Till date it is not the case of the respondents that any such proceedings have been initiated. The petitioners offered explanation for not being able to cultivate the land for the period in question. The Secretary however, rejected the explanation holding that the explanation is not valid. It may be noted that show cause notice proceedings were pertaining to the non-agricultural use permission granted by the Collector and not for resuming the management of the land by the Government in terms of provisions contained in section 65 of Bombay Tenancy and Agricultural Lands Act. No such proceedings were initiated or pursued by the Government. It was therefore, not open for the Secretary to examine this aspect of the matter and to conclude that the explanations offered by the petitioners are not sufficient. In-fact, in this regard, the Secretary concluded that the land remained uncultivated continuously for a period in excess of two years and that therefore, breach of section 65 of the Bombay Tenancy and Agricultural Lands Act is established and the land is therefore, required to be resumed by the Government. Such conclusions were not permissible. The show cause notice was not pertaining to the breach of

section 65 of the Bombay Tenancy and Agricultural Lands Act and the proceedings were pertaining to the order passed by the Collector granting "NA Permission" to the petitioners. Independently, there were no proceedings initiated against the petitioners under the Bombay Tenancy and Agricultural Lands Act. The learned advocate for the petitioners correctly pointed out that the Secretary could not have held that the land is required to be confiscated by the Government for breach of section 65 of the Bombay Tenancy and Agricultural Lands Act. The learned advocate for the petitioners placed reliance on the decision of this Court in the case of Evergreen Apartment Co-op, Housing Society v. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) GLR 113.

4.4 As noted earlier, ground no.5 contained in the show cause notice was dropped by the Secretary and no further discussion in this regard is therefore, necessary.

4.5 With respect to the ground no.6 in the show cause notice, the Secretary concluded that the approach road though may have been provided, the same is not

indicated by different colour in the map. He therefore, concluded that this ground is established against the petitioners and therefore, indirectly held that approach road is not provided at all. In the impugned order it is not disputed that approach road is actually provided for. It is only concluded that same is not indicated on the map by different colour. To therefore, conclude that no approach road is provided at all, would be inappropriate. In-fact the learned AGP Shri Gori was not seriously in a position to support this ground also.

5. In totality of the facts and circumstances of the case, I find that the Secretary erred in concluding all the grounds against the petitioners for detailed reasons mentioned here-in-above. Though impugned order is styled as one remanding the proceedings to the Collector, such remanded proceedings are required to be decided as per the observations made by the Secretary in the impugned order. When the Secretary has noted several aspects of the matter against the petitioner, no useful purpose would be served in permitting the Collector to undertake fresh examination as the Collector would be bound by conclusive opinion of the

Secretary on number of issues. Therefore, despite the suggestion by learned AGP Shri Gori that this Court should not interfere with the proceedings where the impugned order only amounts to remand, I have examined the legality of the entire order and I find that Secretary committed an error in holding these grounds against the petitioners. Since I individually find that the Secretary was not justified in concluding these grounds against the petitioners and since I find that the impugned order is required to be quashed on the basis of above discussion, it is not necessary further to examine some of the legal contentions raised by the learned advocate for the petitioners by referring to decision of this Court in the case of Karimbhai Kalubhai Belim & ors. v. State of Gujarat & Anr. reported in 1996(1) GLR 659, wherein the learned Judge was pleased to observe that once Development Permission is granted under section 29 of the Town Planning Act, the land holder is not required to obtain any permission under any other law including "NA Permission".

6. In the result, the petition is allowed. The impugned order dated 15-03-1995 is quashed and set aside. Rule

is made absolute with no order as to costs.

(Akil Kureshi, J.)

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